

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MELODY J. ROSE,

Plaintiff,

Case No. 09-C-0142

vs.

STEVEN M. CAHEE, M.D.,
FOND DU LAC REGIONAL CLINIC, S.C.,
and AGNESIAN HEALTHCARE, INC.,

Defendants.

**AGNESIAN HEALTHCARE, INC.'S
NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 56, Civil L. R. 7.1 (E.D. Wis.), and Civil L. R. 56.2 (E.D. Wis.), the defendant, Agnesian Healthcare, Inc. ("Agnesian"), by its attorneys, Otjen, Van Ert & Weir, S.C., hereby moves the court, at the United States Courthouse for the Eastern District of Wisconsin, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, for summary judgment pursuant to Fed. R. Civ. P. 56(c), on the grounds that that:

1. Agnesian Healthcare, Inc. is statutorily exempt from coverage under Title III of the Americans with Disabilities Act, pursuant to 42 U.S.C. § 12187.
2. The claim brought under Section 504 of the Rehabilitation Act must be dismissed because Ms. Rose cannot prove that Agnesian denied, excluded, or otherwise discriminated against her solely because she was HIV positive.
3. The claims brought under section 252.14, Wis. Stat., must be dismissed because Ms. Rose cannot prove that Agnesian denied, excluded, or otherwise discriminated against her solely because she was HIV positive.

4. The claim brought under section 106.52, Wis. Stat., must be dismissed because Ms. Rose cannot establish that Agnesian denied her the full and equal enjoyment of a place of public accommodation.

This motion is supported by the Memorandum of Law in Support of Summary Judgment, the Affidavit of Neal S. Krokosky, the Affidavit of Glen Treml, and the Proposed Findings of Fact filed herewith. Agnesian also adopts the arguments advanced by the co-defendants in favor of summary judgment to the extent that they are applicable and do not conflict with the arguments contained herein.

Dated this 3rd day of December 2009.

Respectfully submitted,

s/ Neal S. Krokosky
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing (including all documents referenced herein) was filed electronically with the Clerk of Court and served by operation of the Court's filing system to all attorneys of record on December 3, 2009:

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By: s/ Neal S. Krokosky